ORDINANCE NO. 8 Series 1991

AN ORDINANCE FOR THE ISSUANCE AND SALE OF CITY OF ELGIN, OREGON, REVENUE INSTALLMENT SEWER BONDS IN THE PRINCIPAL SUM OF $120,000 TO FARMERS HOME ADMINISTRATION FOR THE PURPOSE OF PROVIDING A PORTION OF THE COSTS OF ACQUISITION, CONSTRUCTION, IMPROVEMENT, AND EXTENSION OF A SEWER SYSTEM WITHIN AND WITHOUT THE BOUNDARIES OF THE CITY OF ELGIN, OREGON: PROVIDING FOR THE FORM AND TERMS OF SAID BONDS, AUTHORIZING THE PAYMENT OF SAME, AND DECLARING AN EMERGENCY.

WHEREAS, the City Council of the City of Elgin, Oregon (the "City"), has been duly authorized by Resolution No. 1990-21, dated October 18, 1990, to issue Revenue Installment Sewer Bonds in an amount not to exceed the sum of $120,000, in excess of any existing bond issue, for the acquisition, construction, extension, and improvement of a sewer system within and without the City, hereinafter called "Facility," and,

WHEREAS, Notice of the Resolution was published October 22, 1990, in The Observer, a newspaper of general circulation in the City in the same manner as other public notices of the City, and,

WHEREAS, on or about December 22, 1990, the City Council found that no petitions were filed requesting the City to refer the matter to a vote, and,

WHEREAS, the City Staff has been directed to proceed in accordance with law to issue the bonds, and concurrently therewith and subsequent thereto the City has commenced negotiations with the Farmers Home Administration of the United States Department of Agriculture, hereinafter called "Government," for financial assistance to construct said Facility, and,

WHEREAS, said Farmers Home Administration has indicated a desire to consider said financial assistance and as a result, it is necessary to cause the execution and delivery of installment bonds or other evidence of indebtedness to secure any loan or loans made, or insured, by the Government and to comply with any requirements, terms, and conditions prescribed by the Government or by Government regulations and to execute contracts or enter into agreements and to take any and all other action as may be necessary, incidental, or appropriate to finance, construct, complete, equip, extend, or improve the Facility for and on behalf of the City;

NOW, THEREFORE, THE CITY OF ELGIN, OREGON, ORDAINS AS FOLLOWS:

Section 1. It is necessary to defray a portion of the costs of constructing and equipping the Facility by obtaining a loan made by the Government in accordance with the applicable provisions of the Rural Development Act of 1972, it being acknowledged by the Government that the City is unable to obtain sufficient credit elsewhere to finance the Facility taking into consideration prevailing private and cooperative rates and terms concurrently available.

Section 2. That the City borrow $120,000 and issue as evidence thereof a Revenue Installment Sewer Bond for the full principal amount of the loan. The bond shall be dated with the date of delivery thereof, and shall be in substantially the following form:

UNITED STATES OF AMERICA
STATE OF OREGON
COUNTY OF UNION
CITY OF ELGIN, OREGON

REVENUE INSTALLMENT SEWER BOND NO. _____

KNOW ALL MEN BY THESE PRESENTS: The City of Elgin, Union County, Oregon, hereinafter called the "Borrower," hereby acknowledges itself indebted and for value received promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, hereinafter called the "Government," the principal sum of

ONE HUNDRED TWENTY THOUSAND AND NO/100 DOLLARS,

plus interest on the unpaid principal balance at the rate of 6 percent per annum. The said principal and interest shall be payable in the following installments on or before the following dates:

The sum of $8,718 on the _____ day of _____, 19___, and the sum of $8,718 annually thereafter on the _____ day of _____ until the principal and said interest are fully paid, except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable 30 years from the date of this bond.

All or part of the outstanding bond installments may be paid in inverse order on any date without premiums.

This bond shall be registered as to principal and interest in the name of the United States of America in an appropriate book in the Office of the Recorder of the Borrower, each registration to be noted on the Bond Registration Certificate attached hereto by said Recorder and no transfer hereof shall be valid unless made on said book and similarly noted on the Bond Registration Certificate.

Both the principal and interest shall be paid to the United States of America (as such registered holder) at the Office of the Farmers Home Administration serving Union County, Oregon.

Default hereunder shall constitute default under any other instrument evidencing a debt of Borrower owing to or insured by the Government or securing or otherwise relating to such a debt, and default under any other such instrument shall constitute default hereunder. Upon default the Government, at its option, may declare all or any part of said indebtedness immediately due and payable.

This bond is given as evidence of a loan to Borrower made by the Government pursuant to the Rural Development Act of 1972, as amended, and shall be subject to the present regulations of the Farmers Home Administration ("FmHA") and to the future regulations of FmHA or its successor agency not inconsistent with the express provisions hereof.

This bond is authorized by virtue of Resolution No. 1990-21 adopted by the City Council on October 18, 1990, notice of which was duly published as provided by law and by virtue of Ordinance No. 8-1991 of the Borrower duly passed by the City Council and approved by the Mayor of said Borrower on August 13, 1991, and pursuant to the Uniform Revenue Bond Act, the Constitution and Laws of the State of Oregon, the Charter of the City of Elgin, Oregon, and laws amendatory thereof and supplemental thereto.

This bond and the interest thereon are payable solely from the unobligated net revenues of the sewer utility system of the Borrower and neither the bond nor the payment of interest impose any general liability upon the said Borrower for the payment thereof out of any moneys other than net revenues of the sewer utility system. It is hereby covenanted by the Borrower that so long as this bond shall be outstanding and unpaid, or until there shall have been set apart solely for that purpose sums sufficient to pay when due the entire principal sum hereof together with interest accrued, or to accrue thereon, the City Council of the Borrower shall fix and collect charges for sewer services, such as to provide revenue sufficient to pay, as the same shall become due, the principal and interest of this bond in addition to paying, as the same become due, the necessary expenses of operating, maintaining, renewing, and replacing the sewer utility system of said Borrower, and appropriate reserve funds for such purposes and all other obligations and indebtedness payable out of the revenues of said system.

The bond is exchangeable at the sole expense of the Borrower at any time, upon 90-days' written notice, at the request of the registered owner hereof, and upon surrender of this bond to Borrower at the Office of the Recorder of the Borrower for registered bonds of the denomination of $5,000 each, or integral multiples thereof, in the aggregate principal amount equal to the unpaid principal amount of the bond, and bearing interest on the unpaid principal balances at the rate of 6 percent per annum.

It is hereby certified, recited, and declared that all acts, conditions and things required to exist, happen, and be performed precedent to and in the issuance of this bond have existed, have happened, and have been performed in due time, form, and manner as required by law, that the amount of this bond, together with all obligations of the Borrower, does not

exceed any limits prescribed by the Constitution and Statutes of the State of Oregon and the Charter and Ordinances of the Borrower.

IN WITNESS WHEREOF, the Borrower has caused this bond to be signed by the Mayor of said Borrower and its corporate seal to be affixed hereto and attested by the Recorder of said Borrower, all on 13th day of August, 1991.

CITY OF ELGIN, OREGON

By Rod Spikes
Mayor

ATTEST:

Ivi Gait
City Recorder

BOND REGISTRATION CERTIFICATE

CITY OF ELGIN, OREGON

REVENUE INSTALLMENT SEWER BOND NO. _____

DATE: _____

Registered in name of:

United States of America, Farmers Home Administration

_____

By: City Recorder

Section 3. The unobligated net revenues of the Facility, after payment of the ordinary operation and maintenance expenses thereof, hereby are pledged to the payment of the principal of and interest upon the said bonds.

The funds derived from such sources shall be carried by the Recorder of the City in a separate book account to be designated "City of Elgin Sewer Bond Fund" and shall be expended only in the payment of the principal of and interest on said City Revenue Installment Sewer Bond No. _____ until all of said obligations and any that may be issued to refund them have been fully paid and redeemed or until the provisions for the payment or redemption thereof have been made.

Section 4. The City Recorder shall be the custodian of all funds of the Facility and all funds shall be deposited in a bank which is a member of the Federal Deposit Insurance Corporation. The Recorder shall execute a Fidelity Bond in an amount not less than $31,000 with a surety company approved by the Government and the amount thereof shall not be reduced without the prior written consent of the Government. The City Recorder is hereby directed to establish the following accounts into which the current funds of the Facility bond proceeds, the revenues from the Facility and other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the bonds hereby authorized remain unpaid.

(a) Construction Account. The proceeds of the bonds hereby authorized and any interim financing acquired shall be deposited in the Construction Account. Amounts in the Construction Account exceeding $100,000 shall either be secured by the depository bank in advance in accordance with State and Federal law or deposited in the Oregon Local Government Investment Pool. Withdrawal from the Construction Account shall be made only on checks signed by the City Recorder of the City as authorized by the City Council, countersigned by the Mayor or other authorized City Official and only for the purposes for which said bonds were issued as specified in the estimate of costs. The City's share of any liquidated damages and other moneys paid by defaulting contractors or their sureties will be deposited in the Construction Account to assure completion of the project. When the construction of the Facility has been completed or all construction costs have been paid in full, any balance remaining in the Construction Account shall be used to pay outstanding installments on the bond in inverse order without premiums. The Construction Account shall then be closed.

(b) Revenue Account. As soon as the Facility becomes revenue producing, the gross revenues shall be set aside into a separate account to be designated the Revenue Account, and moneys so deposited therein shall be expended and used only in the manner and order as follows:

1. Operation and Maintenance Account (bookkeeping account). There shall be set aside and deposited each month, before any other expenditures therefrom, a sufficient portion of the moneys in the Revenue Account to pay the reasonable and necessary current expenses of operating and maintaining the Facility for the current month.

2. Debt Service Account (bookkeeping account). After the transfer required in item 1 above, there shall be transferred each month from the Revenue Account, before any other expenditures or transfer therefrom, and deposited in the Debt Service Account for payment of the annual installment of the bond, a sum equal to at least one-twelfth of the annual installment becoming due on the next succeeding _____ day of _____. If the City for any reason shall fail to make such monthly deposit, then an amount equal to the deficiency shall be set apart and deposited in the Debt Service Account out of the gross revenues in the ensuing month or months, which amount shall be in addition to the regular monthly deposit required during each succeeding month or months.

Whenever there shall accumulate in the Debt Service Account amounts in excess of the requirements during the next twelve months for paying principal and interest on outstanding bond installments, and in the Operation and Maintenance Account and the Reserve Account hereinafter established amounts in excess of the requirements thereof, such excess may be used by the City to make prepayments on the bond.

3. Reserve Account (bookkeeping account). Out of the balance of income and revenue in the Revenue Account remaining after the transfers required in items 1 and 2 above have been made, there shall be set aside and deposited in the Reserve Account the sum of $872 annually until there is accumulated in that fund the sum of $8,720 after which no further deposits need be made into said account except to replace withdrawals. The Reserve Account shall be used and disbursed only for the purpose of paying the cost of repairing or replacing any damage to the Facility which may be caused by any unforeseen catastrophe and when necessary for the purpose of making payments of principal and interest on the bonds hereby authorized in the event the amount of the Debt Service Account is insufficient to meet such payments. Approval by Farmers Home Administration is required prior to the use of the Reserve Account funds. Whenever

disbursements are made from said account, said deposits shall be resumed until there is again accumulated the amount of $8,720, at which time deposits may be again discontinued.

Section 5. The City covenants and agrees that so long as the bond hereby authorized remains unpaid:

(a) The City will indemnify the Government for any payments made or losses suffered by the Government as a result of or in connection with the Facility.

(b) The City will comply with applicable state laws and regulations and continually operate and maintain the Facility in good condition.

(c) The City will impose and collect sufficient rates and charges for use of the Facility to provide for the operation and maintenance thereof and the payments on the bonds hereby authorized and the maintenance of the various funds herein created; that all use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the City; and that no free use of the Facility will be permitted.

(d) The City will maintain complete books and records relating to the operation of the Facility and its financial affairs and will cause such books and records to be audited annually at the end of each fiscal year and an audit report prepared, and will furnish the Government, without request, a copy of each annual audit report. At all reasonable times the Government shall have the right to inspect the Facility and the records, accounts, and data of the City relating thereto.

(e) The City will maintain such insurance coverage as may be required by the Government.

(f) The City will not borrow money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility, exclusive of normal maintenance, without obtaining the prior written consent of the Government.

(g) The City will not dispose of or transfer its title to the Facility of any part hereof, including lands and interest in lands, by sale, mortgage, lease, or other encumbrance, without prior written consent of the Government.

(h) The City will cause to be levied and collected such assessments as may be necessary to operate and maintain the Facility in good condition and meet payments on the bonds when the same become due if, for any reason, gross revenues are insufficient.

Section 6. If at any time it shall appear to the Government that the City is able to refinance the amount of the bond then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the City will, upon request of the Government, apply for and accept such loan in an amount sufficient to repay the Government and will take all such actions as may be required in connection with such loan.

Section 7. The Mayor and the City Recorder are hereby authorized and directed to execute for and on behalf of Borrower Form FmHA 400-1, "Equal Opportunity Agreement," Form FmHA 400-4, "Assurance Agreement," as required by the provisions of Title VI of the Civil Rights Act of 1964, Form FmHA 1942-47, "Loan Resolution," Form FmHA 442-21, "Right-of-Way Certificate," Form FmHA 1942-46, "Letter of Intent to Meet Conditions," Form FmHA 1910-11, "Applicant Certification Federal Collection Policies for Consumer or Commercial Debts," Form FmHA 1924-18, "Partial Payment Estimate," Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters - Primary Covered Transactions," Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions," and if an FmHA development grant is involved, Form FmHA 1942-31, "Association Water or Sewer System Grant Agreement," and Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants)."

Section 8. The City desires and deems it necessary and advisable for the immediate preservation of the health, peace, and safety of the City that this Ordinance become effective at once, for the reason that the sewer Facilities of said City are inadequate to meet its needs and plans for the new construction, and improvements must be commenced at once in order to be ready for use as soon as possible and, therefore, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect from and after its passage and approval.

Passed by the City Council the 13th day of August, 1991.

Submitted to and approved by the Mayor on this 13th day of August, 1991.

CITY OF ELGIN, OREGON

By Rod Spikes
Mayor

ATTEST:

Lu Galt
City Recorder